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6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA

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9 CHANCE B. CARDEN,

Case No. 3:16-cv-00684-MMD-VPC

10 Petitioner,

ORDER

11 v.

12 NEVADA DEPARTMENT OF
13 CORRECTIONS, *et al.*,

14 Respondents.

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16 This case was initiated on November 23, 2016, by Chance B. Carden, a Nevada
17 prisoner. On that date, Carden submitted an application to proceed *in forma pauperis*
18 (ECF No. 1) for a habeas action, without also submitting a habeas petition. The Court has
19 reviewed its records, and it does not appear that Carden has filed a petition separately in
20 another action without a pauper application.

21 A petitioner may not commence a federal action by filing only a pauper application
22 unaccompanied by a pleading. Under Rule 12 of the Rules Governing Section 2254
23 Proceedings, the Federal Rules of Civil Procedure generally apply to the extent not
24 inconsistent with the habeas rules. Under Rule 3 of the Federal Rules of Civil Procedure,
25 “[a] civil action is commenced by filing a complaint with the court.” Accordingly, Carden
26 must submit a pleading to properly commence an action.

27 Therefore, Carden's pauper application will be denied without prejudice, and the
28 action will be dismissed without prejudice. This dismissal, in and of itself, is without

1 prejudice to the filing of a new action. However, nothing in this dismissal precludes the
2 dismissal of a later-filed action on the basis of, if applicable, untimeliness, lack of
3 exhaustion, procedural default, or any other basis.

4 It is therefore ordered that the Application to Proceed *in Forma Pauperis* (ECF No.
5 1) is denied without prejudice.


6 It is further ordered that this action is dismissed without prejudice to the filing of a
7 petition in a new action, accompanied by a new and properly completed application to
8 proceed *in forma pauperis* with all required attachments.

9 It is further ordered that petitioner is denied a certificate of appealability.

10 It is further ordered that the Clerk of the Court send petitioner two (2) copies of the
11 form application to proceed *in forma pauperis* for incarcerated persons, two (2) copies of
12 the form petition for writ of habeas corpus pursuant to 28 U.S.C. section 2254, the
13 instructions for both forms, and a copy of the papers that he submitted in this case.

14 It is further ordered that the Clerk of the Court enter final judgment accordingly,
15 dismissing this action without prejudice.

16 DATED THIS 1st day of December 2016.

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20 MIRANDA M. DU
21 UNITED STATES DISTRICT JUDGE
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